IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

DAVID A. FOLEY,)))
Plaintiff,)
v.) Civil Action No. 4:21-cv-01098-O
JOSEPH R. BIDEN, JR., in his official capacity as PRESIDENT OF THE UNITED STATES,)))
Defendant.)) _)

JOINT STATUS REPORT

The parties respectfully submit the following joint status report in compliance with the Court's order of June 23, 2022. *See* ECF No. 37.

Plaintiff commenced this challenge to Executive Order 14043 by filing a lawsuit against President Biden and a motion seeking preliminary relief on September 29, 2021. *See* ECF Nos. 1, 4. On October 6, 2021, the Court denied Plaintiff's motion, holding that "the Court cannot remedy Plaintiff's alleged injury because the Court has no declaratory or injunctive power against President Biden." ECF No. 18 at 3. On November 12, 2021, Plaintiff filed a motion to amend the complaint and add additional defendants, superseding a previous motion seeking similar relief. *See* ECF No. 22; *see also* ECF No. 19. On October 29, 2021, the Court entered an order providing that "Defendant's response to the Complaint is 21 days after any order denying Plaintiff's Motion for Leave to Amend." ECF No. 26.

Plaintiff's motion to amend the complaint is fully briefed. If the motion is denied, Defendant will respond to the original complaint within 21 days, in accordance with the Court's order of October

29, 2021. If the motion is granted, Defendants will respond to the amended complaint in accordance

with the Federal Rules and any subsequent order of this Court.

Finally, the parties note that the Court may wish to await developments in related Fifth Circuit

litigation before proceeding further in this case. Specifically, in Feds for Medical Freedom v. Biden, No.

21-356, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022), a district court entered a nationwide preliminary

injunction prohibiting the implementation or enforcement of Executive Order 14043. That decision

was reversed by the Fifth Circuit, in an opinion holding that the Civil Service Reform Act precludes a

federal employee's challenge to Executive Order 14043, but the mandate did not immediately issue

and the injunction remained in effect. See Feds for Medical Freedom v. Biden, 30 F.4th 503 (5th Cir. 2022).

On June 27, 2022, the Fifth Circuit granted the plaintiffs' petition for rehearing en banc, vacated the

panel opinion, ordered supplemental briefing, and set the case for oral argument for the week of

September 12, 2022. See Feds for Med. Freedom v. Biden, No. 22-40043 (5th Cir. June 27, 2022). For

those reasons, as of the date of this filing, the preliminary injunction remains in effect and Executive

Order 14043 will not be enforced against Plaintiff. Further developments in the Feds for Medical Freedom

litigation will necessarily affect some of the issues to be decided by this Court, and this Court therefore

might consider awaiting further developments in the Feds for Medical Freedom litigation before

proceeding further in this case.

Although Plaintiff agrees that there is overlap between the issues in the current matter and

those in Feds for Medical Freedom, Plaintiff contends that this matter should move forward because

Plaintiff's Proposed Amended Complaint also contains theories of violation-including claims of

religious discrimination-which are not before the Fifth Circuit Court of Appeals in Feds for Medical

Freedom.

Dated: July 8, 2022

Respectfully submitted,

BRIAN M. BOYNTON

/s/ David A. Foley

David A. Foley

Principal Deputy Assistant Attorney General

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Texas Bar No. 24122807 David.Foley.JMJ@proton.com (682)325-8378 1542 Wayside Dr. Keller, Texas

/s/ Daniel S. Flickinger
Daniel S. Flickinger
Alabama State Bar No. 9539N77F
dflick@gmail.com
205-470-6997
P.O. Box 36956
Hoover, AL 35236

Counsel for Plaintiffs

CHRISTOPHER HALL CARLOTTA P. WELLS Assistant Directors

/s/ R. Charlie Merritt
STEVEN A. MYERS
Senior Trial Counsel
JOSEPH J. DEMOTT
R. CHARLIE MERRITT (VA Bar # 89400)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 616-8098
E-mail: robert.c.merritt@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ R. Charlie Merritt
R. Charlie Merritt